

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re REFCO, INC. SECURITIES LITIGATION :		07 MDL 1902 (JSR)
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	:	
KENNETH M. KRYIS, <i>et al.</i> ,	:	
	:	08 Civ. 3065 (JSR)
Plaintiffs,	:	08 Civ. 3086 (JSR)
	:	
v.	:	
	:	DECLARATION OF
CHRISTOPHER SUGRUE, <i>et al.</i> ,	:	KEVIN H. MARINO
	:	
Defendants.	:	
	:	
	:	FILED ELECTRONICALLY
-----	X	

KEVIN H. MARINO, of full age, hereby declares, pursuant to 28 U.S.C. § 1746(2), as follows:

1. I am an attorney at law of the bar of this Court and a member of the law firm Marino, Tortorella & Boyle, P.C., attorneys for defendants Liberty Corner Capital Strategies, LLC and William T. Pigott (collectively, "Liberty Corner"). I respectfully submit this Declaration in support of Liberty Corner's Response to the SPhinX Plaintiffs' Objection To The Report And Recommendation Of The Special Master That The Amended Complaint Be Dismissed With Prejudice.

2. Annexed hereto as Exhibit A is a true and correct copy of an excerpt of the testimony of Santo C. Maggio ("Maggio") given in United States v. Collins, 07 Cr. 1170 (LBS), on June 2, 2009. Special Master Capra considered that testimony in this matter, as reflected on pages 138 through 140 of the April 16, 2010 oral argument transcript.

3. Annexed hereto as Exhibit B are true and correct copies of excerpts of Maggio's deposition testimony in In re Refco, Inc. Securities Litigation, 07 MDL 1902 (JSR) on December 15 and 16, 2009.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746(2), that the foregoing is true and correct.

Executed on: March 2, 2012
Chatham, New Jersey

Respectfully submitted,

MARINO, TORTORELLA & BOYLE, P.C.

By:



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Liberty Corner Capital Strategies, LLC and
William T. Pigott

EXHIBIT A

SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

New York, N.Y.

v.

07 CR 1170

JOSEPH P. COLLINS,

Defendant.

-----x

June 2, 2009

10:00 a.m.

Before:

HON. LEONARD B. SAND,

District Judge

APPEARANCES

LEV L. DASSIN

Acting United States Attorney for the
Southern District of New York

BY: CHRISTOPHER GARCIA

NICHOLAS S. GOLDIN

Assistant United States Attorneys

COOLEY GODWARD KRONISH LLP

Attorneys for Defendant

BY: WILLIAM J. SCHWARTZ

JONATHAN P. BACH

DANIEL M. HIBSHOOSH

REED A. SMITH

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1 Q. Why not?

2 A. Again, I believe that -- I believe Joe wouldn't have

3 questioned what the documents were, and I believe that he

4 wouldn't have said anything.

5 Q. And why not, Mr. Maggio?

6 A. Again, because of my prior -- my prior workings with

7 Mr. Collins.

8 Q. Mr. Maggio, during the course of the time you were doing

9 round robin transactions, were you asked by customers about the

10 purpose?

11 A. Yes.

12 Q. Did you lie to them about the purpose?

13 A. Yes.

14 Q. And why did you lie to them about the purpose?

15 A. If you tell them the truth, you told them it was a -- you

16 told them that the reason why was to hide a receivable, they

17 would know that there was a -- that there's a potential problem

18 at Refco. So we basically told them that it was what they call

19 a balance sheet transaction, which, you know, structured

20 properly is -- was industry practice.

21 Q. When you say "structured properly," you mean involving

22 nonconsolidating entities?

23 A. That's correct.

24 Q. Now, was RGHI a consolidating entity?

25 A. No.

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1 you can construct documentation, all right, with these

2 characteristics. And I gave David a list of the

3 characteristics that we need. RGHI borrowed from customer.

4 Customer borrowed from RCM to make certain that their

5 indemnifications and guarantees so that we could always protect

6 the customer. David went to --

7 Q. Who is David -- just if I could interrupt, Mr. Maggio, who

8 was David Weaver again?

9 A. David Weaver was the controller for Refco Capital Markets,

10 so he was the chief accountant from Refco Capital Markets.

11 Q. Was Mr. Weaver aware that the receivable balance, the

12 amount that RGHI owed to Refco was greater than reported in

13 financial statements?

14 A. Yes.

15 Q. Why did you have Mr. Weaver initiate contact with Mayer

16 Brown than do it yourself?

17 A. One, David would -- David knew about the receivable, and he

18 knew -- knew the transaction from the prior years that we did

19 it on the computer system. Two, I was trying to get David to

20 take a little bit more responsibility, take that responsibility

21 off my hands.

22 Q. Were documents drafted, Mr. Maggio?

23 A. Yes, sir.

24 Q. And did you review them?

25 A. Yes.

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1 Q. Was Mr. Bennett aware of Mayer Brown's involvement?

2 A. Yes.

3 Q. Over the years that you worked with Mr. Bennett, did he

4 direct you to -- did he direct you to lie to people about the

5 balance that existed between RGHI and Refco?

6 A. Yes.

7 Q. Did he direct you to lie about various frauds that occurred

8 at Refco?

9 A. Yes.

10 Q. Did he ever direct you to conceal the true balance of the

11 receivable from RGHI to Refco from Mr. Collins?

12 A. No.

13 Q. Did he ever direct you to conceal any fraud from

14 Mr. Collins?

15 A. No.

16 Q. In fact, what did he tell you?

17 A. That I -- I could feel comfortable talking to Mr. Collins.

18 Q. So starting in 2000, Mr. Maggio, how did the process of

19 documenting the round robins start?

20 A. Mr. Garcia, do you mean how did the drafting start, how --

21 Q. Yes. How is the -- in the process initiated, what was the

22 very first step that you took?

23 A. Mr. Weaver came to me and said that Ingram Micro was

24 looking for documentation. I told David that I understand his

25 concerns. Why don't you go to Joe at Mayer Brown and see if

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1 Q. Showing you what's been marked for identification purposes

2 as Government Exhibits 2000.1(a) through (f). Do you recognize

3 these documents, Mr. Maggio?

4 A. Yes, sir.

5 Q. What is this collection of documents?

6 A. Excuse me?

7 Q. What is this collection of documents?

8 A. This is the collection of documents that we did with CIM

9 Ventures, which is the -- which is a subsidiary of Ingram

10 Micro, and it represents the loan agreements between Refco

11 Capital Markets, Refco Group, Limited and Refco Group Holdings,

12 Inc. -- excuse me, I'm sorry. Between Refco Capital Markets

13 and the customer and Refco Group Holdings Inc. and the

14 indemnifications and guarantees from Refco Group, Limited to

15 the client.

16 MR. GARCIA: The government offers 2000.1(a) through

17 (f).

18 MR. BACH: No objection.

19 THE COURT: Received.

20 (Government's Exhibits 2000.1(a) through (f) received

21 in evidence)

22 BY MR. GARCIA:

23 Q. Mr. Maggio, just briefly, who signed these documents on

24 behalf of Refco Capital Markets?

25 A. Excuse me, sir? Phil Bennett.

SOUTHERN DISTRICT REPORTERS, P.C.

EXHIBIT B

In The Matter Of:

In re: REFCO, INC. SECURITIES LITIGATION

SANTO C. MAGGIO

December 15, 2009

MERRILL CORPORATION

25 West 45th Street - Suite 900

New York, NY 10036

PH: 212-557-7400 / FAX: 212-692-9171

MAGGIO, SANTO C. - Vol. 2

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1 SANTO C. MAGGIO
 13:52:06 2 while you were testifying at Mr. Collins'
 13:52:08 3 trial was truthful; is that also correct?
 13:52:10 4 A. Yes.
 13:52:11 5 Q. And you understood that you
 13:52:13 6 were under oath when you gave such
 13:52:15 7 testimony; correct?
 13:52:16 8 A. Yes.
 13:52:16 9 Q. And you understand that you're
 13:52:18 10 under oath today as well; correct?
 13:52:20 11 A. Yes.
 13:52:20 12 Q. Now, on June 2nd of this year,
 13:52:27 13 2009, do you recall testifying as
 13:52:29 14 follows: And now, Mr. Maggio, were there
 13:52:32 15 any indemnifications or guarantees in
 13:52:35 16 document form related to the round robins
 13:52:39 17 that occurred prior to 2000?
 13:52:42 18 "Answer: No.
 13:52:42 19 "Question: Why institute a
 13:52:44 20 practice of guarantees and indemnities in
 13:52:47 21 2000?
 13:52:48 22 "Answer: We always gave the
 13:52:49 23 impression to the customers who did the
 13:52:51 24 transaction prior to 2000 that Refco
 13:52:55 25 Group Holdings, Inc. was a consolidating

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1 SANTO C. MAGGIO
 13:52:57 2 entity within Refco Group. So when you
 13:53:00 3 give that impression, the customer
 13:53:02 4 already says okay, I have two Refco
 13:53:04 5 entities under Refco Group. If anything
 13:53:07 6 happens with one, alongside the loan,
 13:53:09 7 they could net all the transactions.
 13:53:12 8 "That wasn't the case in 2000,
 13:53:13 9 we had one customer who wanted to know
 13:53:15 10 who Refco Group Holdings were, and I
 13:53:18 11 believe we told him. And he wanted to
 13:53:20 12 document to make certain that his company
 13:53:22 13 was protected in case RGHI did not repay
 13:53:25 14 its loan. Hence we decided to come up
 13:53:27 15 with documentation."
 13:53:29 16 Do you recall that testimony,
 13:53:31 17 sir?
 13:53:31 18 MR. RIEMAN: Objection.
 13:53:31 19 A. Yes.
 13:53:32 20 Q. Was it truthful testimony?
 13:53:34 21 A. Yes.
 13:53:34 22 Q. And I believe you testified
 13:53:36 23 yesterday, maybe earlier today, but I
 13:53:38 24 believe it was yesterday that the
 13:53:39 25 customer who wanted to know who Refco

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1 SANTO C. MAGGIO
 13:53:43 2 Group Holdings were, and I believe we
 13:53:46 3 told him, was somebody affiliated with
 13:53:50 4 Ingram Micro; is that correct?
 13:53:51 5 A. Yes.
 13:53:52 6 Q. I believe you testified that
 13:53:53 7 one of the funds associated with
 13:53:55 8 Mr. Flanagan engaged in one of these
 13:53:58 9 so-called round robin loans prior to
 13:54:00 10 2000. Is that also correct?
 13:54:01 11 A. Yes.
 13:54:02 12 Q. And is it fair to say that he
 13:54:04 13 was one of the parties that had the
 13:54:05 14 impression that was given to customers
 13:54:07 15 who did the transaction prior to 2000
 13:54:10 16 that Refco Group Holdings, Inc. was a
 13:54:12 17 consolidating entity within Refco Group?
 13:54:16 18 MR. MILLS: Objection.
 13:54:20 19 MS. GUMMER: Objection to
 13:54:21 20 form.
 13:54:21 21 A. That I don't know.
 13:54:23 22 Q. Do you have any reason to
 13:54:24 23 believe he was not given that impression?
 13:54:26 24 A. No.
 13:54:26 25 Q. In fact it's fair to say he

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1 SANTO C. MAGGIO
 13:54:28 2 likely was given that impression;
 13:54:30 3 correct?
 13:54:30 4 MR. RIEMAN: Objection.
 13:54:31 5 MR. MILLS: Objection.
 13:54:32 6 A. I can't say that.
 13:54:32 7 Q. Do you recall further
 13:54:34 8 testifying at Mr. Collins' criminal trial
 13:54:38 9 proceeding as follows, and now I'm
 13:54:40 10 reading from page 2273:
 13:54:43 11 "Question: Mr. Maggio, during
 13:54:45 12 the course of the time you were doing
 13:54:46 13 round robin transactions, were you asked
 13:54:49 14 by customers about the purpose?
 13:54:52 15 "Answer: Yes.
 13:54:52 16 "Question: Did you lie to
 13:54:54 17 them about the purpose?
 13:54:55 18 "Answer: Yes.
 13:54:56 19 "Question: And why did you
 13:54:57 20 lie to them about the purpose?
 13:55:00 21 "Answer: If you tell them the
 13:55:01 22 truth, you told them that it was a -- you
 13:55:03 23 told them that the reason why was to hide
 13:55:05 24 a receivable, they would know that there
 13:55:07 25 was a -- that there is a potential

35 (Pages 608 to 611)

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1 SANTO C. MAGGIO
 13:55:09 2 problem at Refco. So we basically told
 13:55:11 3 them that it was what they called a
 13:55:14 4 balance sheet transaction which, you
 13:55:17 5 know, structured properly is, was,
 13:55:19 6 industry practice."
 13:55:20 7 Do you recall that testimony?
 13:55:21 8 A. Yes.
 13:55:22 9 Q. And was it truthful testimony?
 13:55:23 10 A. Yes.
 13:55:24 11 Q. And so it was true that if a
 13:55:25 12 customer were to inquire as to the
 13:55:28 13 purpose of one of these so-called round
 13:55:32 14 robin transactions, that they were lied
 13:55:33 15 to?
 13:55:33 16 MR. RAND: Objection.
 13:55:34 17 MR. MILLS: Objection.
 13:55:35 18 A. If a customer asked, yes.
 13:55:37 19 Q. And the reason why was because
 13:55:39 20 Refco wanted to mask the existence of the
 13:55:41 21 RGHI receivable from the customers who
 13:55:44 22 were engaging in these transactions;
 13:55:46 23 correct?
 13:55:46 24 MR. RAND: Objection.
 13:55:47 25 A. Yes.

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1 SANTO C. MAGGIO
 13:55:47 2 Q. And that's because you didn't
 13:55:49 3 want it to be widely understood that the
 13:55:52 4 RGHI receivable existed; correct?
 13:55:55 5 A. Yes.
 13:56:02 6 Q. Now, I believe you testified
 13:56:03 7 yesterday that you spoke to Mr. Flanagan
 13:56:06 8 a few times; is that correct?
 13:56:09 9 A. Give me the context of what I
 13:56:14 10 said, of what the question was.
 13:56:15 11 Q. Okay. I'll just ask it a
 13:56:17 12 different way. All right?
 13:56:18 13 A. Okay.
 13:56:19 14 Q. All right. Do you personally
 13:56:21 15 know Mr. Flanagan?
 13:56:23 16 A. Yes.
 13:56:23 17 Q. How many times have you spoken
 13:56:24 18 to him?
 13:56:25 19 A. Many.
 13:56:26 20 Q. And you said that it was Peter
 13:56:28 21 McCarthy, though, who spoke to
 13:56:30 22 Mr. Flanagan about these so-called round
 13:56:33 23 robin loans; correct?
 13:56:33 24 A. Yes.
 13:56:34 25 Q. And that you did not speak

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1 SANTO C. MAGGIO
 13:56:35 2 substantively to Mr. Flanagan about those
 13:56:38 3 loans; correct?
 13:56:38 4 A. Yes.
 13:56:39 5 Q. That it was Mr. McCarthy who
 13:56:41 6 spoke to Mr. Flanagan; correct?
 13:56:42 7 A. Yes.
 13:56:43 8 Q. And you did not discuss the
 13:56:48 9 substance of these so-called round robin
 13:56:51 10 loans with anybody else associated with
 13:56:54 11 Delta Flyer or EMF Financial Products;
 13:56:58 12 correct?
 13:56:58 13 A. Correct.
 13:56:58 14 Q. Now, you indicated in your
 13:57:03 15 prior testimony that these so-called
 13:57:05 16 round trip loans or round robin loans
 13:57:07 17 were used to mask the RGHI receivable;
 13:57:10 18 correct?
 13:57:11 19 A. Yes.
 13:57:12 20 Q. And that was only true, these
 13:57:15 21 so-called round trip loans or round robin
 13:57:19 22 loans could only mask the RGHI receivable
 13:57:21 23 if you took all of them together;
 13:57:24 24 correct?
 13:57:28 25 A. Could you explain that?

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1 SANTO C. MAGGIO
 13:57:29 2 Q. Sure, let me be clearer.
 13:57:31 3 Up until 2004, prior to 2004,
 13:57:35 4 the RGHI receivable could only be masked
 13:57:37 5 by these so-called round trip loans if
 13:57:40 6 you combined all of them together;
 13:57:42 7 correct? In other words, one so-called
 13:57:45 8 loan would not have been sufficient in
 13:57:47 9 size to mask the RGHI receivable;
 13:57:50 10 correct?
 13:57:51 11 MR. MILLS: Objection.
 13:57:52 12 A. I don't understand the
 13:57:52 13 question.
 13:57:53 14 Q. Let me break it down.
 13:57:54 15 A. Okay.
 13:57:55 16 Q. The RGHI receivable was
 13:57:58 17 growing in size; correct?
 13:57:59 18 A. Yes.
 13:57:59 19 Q. In order to mask it in any
 13:58:02 20 year from prior to 2000 up until 2004, it
 13:58:06 21 took a number of these so-called round
 13:58:08 22 trip loans to have enough loans to mask
 13:58:11 23 the so-called or to mask the RGHI
 13:58:13 24 receivable; correct?
 13:58:15 25 MR. MILLS: Objection.

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In The Matter Of:

In re: REFCO, INC. SECURITIES LITIGATION

SANTO C. MAGGIO

December 16, 2009

MERRILL CORPORATION

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MAGGIO, SANTO C. - Vol. 3

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<p>09:55:55 1 09:55:57 2 an agent and a principal. 09:55:57 3 Q. Right. 09:55:59 4 A. A principal is where you buy 09:56:01 5 the securities from Daiwa in your name 09:56:02 6 and then you sell it to someone in your 09:56:05 7 name. That's doing a transaction in 09:56:06 8 principal. 09:56:09 9 Transaction as agent is Daiwa 09:56:13 10 or someone sells to CSFB and they get a 09:56:13 11 fee for doing that. 09:56:16 12 Q. Understood. And if Mr. Pigott 09:56:19 13 bought the securities from Daiwa, that 09:56:21 14 would not be an agency transaction, that 09:56:22 15 would be a principal transaction; 09:56:23 16 correct? 09:56:23 17 A. Yes. 09:56:26 18 Q. And that would not -- in that 09:56:29 19 circumstance, the NASD markup rule that 09:56:30 20 you referred to the other day wouldn't 09:56:33 21 have any applicability whatsoever; 09:56:33 22 correct? 09:56:34 23 A. I disagree. 09:56:36 24 Q. You'd agree with me, sir, that 09:56:36 25 the NASD markup rule has no impact on a</p>	<p>09:57:22 1 09:57:23 2 Am I right or wrong? 09:57:26 3 A. Excuse me, sir, I never said 09:57:26 4 violated. 09:57:28 5 Q. Would you like me to read you 09:57:29 6 your testimony? 09:57:30 7 A. Please, I would appreciate 09:57:56 8 that. 09:57:57 9 Q. Do you recall being asked 09:58:00 10 these questions and giving these answers: 09:58:02 11 "Question: -- 09:58:03 12 MR. HERSHMAN: What page? 09:58:10 13 MR. MARINO: I'm at page 09:58:12 14 12:31:04 is the line, and I guess 09:58:14 15 that's 141 of the transcript. 09:58:17 16 That's the time I guess. 09:58:18 17 MR. HERSHMAN: No, 141 is the 09:58:19 18 page. 09:58:21 19 MR. MARINO: 141 is the page, 09:58:23 20 the time I was giving you is 12:31. 09:58:28 21 So I'm at line 8. 12:30:57. Do 09:58:29 22 you see that? 09:58:31 23 MR. HERSHMAN: No. 09:58:31 24 Q. "Question: Did Refco have a 09:58:31 25 prior relationship?</p>
Page 897	Page 899
<p>09:56:40 1 09:56:41 2 principal transaction of the type that 09:56:43 3 Mr. Pigott was engaged? 09:56:44 4 A. Absolutely not. 09:56:45 5 Q. Do you know as we sit here 09:56:48 6 today whether the NASD markup rule 09:56:50 7 applied to Mr. Pigott's transactions? 09:56:51 8 A. No. 09:56:52 9 Q. You speculated the other day 09:56:55 10 that Mr. Pigott was doing transactions 09:57:00 11 that were way beyond the 5 percent NASD 09:57:01 12 markup rule. Do you remember that 09:57:01 13 testimony? 09:57:02 14 MR. HERSHMAN: Objection as to 09:57:02 15 form. 09:57:03 16 A. Yes. 09:57:05 17 Q. But as we sit here right now, 09:57:06 18 you'd agree with me that you're not sure 09:57:09 19 if that rule even applied; correct? 09:57:10 20 A. That's exactly right. There 09:57:11 21 is a -- 09:57:13 22 Q. That's my question. My 09:57:16 23 question is, you told us the other day 09:57:18 24 that his transactions violated a rule 09:57:18 25 that you don't even know applied; right?</p>	<p>09:58:32 1 09:58:33 2 MR. HERSHMAN: We're there. 09:58:35 3 Q. "Question: Did Refco have a 09:58:37 4 prior relationship with Mr. Pigott or 09:58:39 5 Liberty Corner? 09:58:40 6 "Answer: I'm sorry, sir, 09:58:41 7 could you repeat that? 09:58:42 8 "Question: Sure. Did Refco 09:58:44 9 have a prior relationship with Liberty 09:58:45 10 Corner or Mr. Pigott? 09:58:46 11 "Answer: Yes. 09:58:47 12 "Question: And what was that 09:58:47 13 relationship? 09:58:50 14 "Answer: Mr. Pigott was a -- 09:58:52 15 Liberty Corner was a customer of Refco. 09:58:55 16 Liberty Corner originally when they 09:58:58 17 started a hedge fund, starting it with 09:58:59 18 Refco's help. 09:59:00 19 "Question: And what do you 09:59:02 20 mean by with Refco's help? 09:59:03 21 "Answer: Well, I believe 09:59:05 22 that -- I believe that's how Mr. Pigott 09:59:06 23 seeded his hedge fund was through an 09:59:09 24 unusual set of circumstances where he 09:59:09 25 either worked for Daiwa or was</p>

18 (Pages 896 to 899)

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09:59:11 1
 09:59:13 2 controlling an inventory of securities,
 09:59:17 3 mainly mortgages, that Daiwa owned."
 09:59:20 4 Let stop there. As we sit
 09:59:22 5 here today, you don't know if that's true
 09:59:23 6 or false; right?
 09:59:23 7 A. That's correct.
 09:59:25 8 Q. Next. "And he was selling
 09:59:28 9 those mortgages or those securities to
 09:59:30 10 what we call the street, the street
 09:59:31 11 meaning other participants in Wall
 09:59:33 12 Street, and the markups on those
 09:59:35 13 securities were extremely high, way above
 09:59:37 14 a typical, you know, NASD rule, which is
 09:59:40 15 the 5 percent or reasonable markup rule.
 09:59:42 16 And the spread between what he bought it
 09:59:44 17 from Daiwa and what he sold it to the
 09:59:47 18 street funded his -- funded his hedge
 09:59:48 19 fund."
 09:59:51 20 As we sit here today, do you
 09:59:51 21 know that to be the case?
 09:59:52 22 MR. HERSHMAN: Objection to
 09:59:52 23 form.
 09:59:54 24 A. I never said violated.
 09:59:54 25 Q. As we sit here today, do you

Page 901

09:59:55 1
 09:59:58 2 know what I just read to be the case?
 09:59:59 3 MR. HERSHMAN: Objection to
 09:59:59 4 form.
 10:00:02 5 A. Sir, he had control --
 10:00:04 6 Q. No. I want you to answer my
 10:00:06 7 questions. I just read you your
 10:00:09 8 testimony and I'm asking you now if the
 10:00:12 9 testimony that you gave under oath, not
 10:00:15 10 during your period of admitted lying, but
 10:00:18 11 just two days ago, is something that you
 10:00:20 12 in fact know to be true.
 10:00:22 13 And specifically do you know
 10:00:25 14 it to be the truth that Mr. Pigott was
 10:00:28 15 selling securities on which the markups
 10:00:31 16 were extremely high, way above a typical,
 10:00:34 17 you know, NASD rule, which is the 5
 10:00:36 18 percent or reasonable markup rule, and
 10:00:39 19 the spread between what he bought it from
 10:00:41 20 Daiwa and what he sold it to the street
 10:00:42 21 funded his hedge fund.
 10:00:45 22 Do you, as we sit here today,
 10:00:46 23 know that to be the truth?
 10:00:47 24 MR. HERSHMAN: Objection to
 10:00:47 25 the form.

Page 902

10:00:47 1
 10:00:49 2 A. I believe that to be the
 10:00:49 3 truth.
 10:00:50 4 Q. Do you know it to be the
 10:00:50 5 truth?
 10:00:51 6 A. I believe it to be the truth.
 10:00:53 7 Q. Well, we obviously are
 10:00:55 8 discussing knowledge, the difference
 10:00:56 9 between knowledge and belief.
 10:00:58 10 So tell me, how did you come
 10:01:01 11 to that belief? Who told you?
 10:01:03 12 A. Peter McCarthy.
 10:01:04 13 Q. You don't have personal
 10:01:05 14 knowledge of this; right?
 10:01:06 15 A. No. It came from Peter
 10:01:07 16 McCarthy.
 10:01:08 17 Q. Your source of knowledge about
 10:01:11 18 the manner in which Mr. Pigott got his
 10:01:13 19 hedge fund up and running is Peter
 10:01:16 20 McCarthy and exclusively Peter McCarthy;
 10:01:18 21 am I right or wrong?
 10:01:18 22 A. Yes.
 10:01:20 23 Q. You never spoke to Mr. Pigott
 10:01:21 24 about it; right?
 10:01:21 25 A. That's correct.

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10:01:21 1
 10:01:23 2 Q. You weren't participating in
 10:01:25 3 it personally; right?
 10:01:27 4 A. Define participating.
 10:01:30 5 Q. You never sat down and talked
 10:01:32 6 to anyone but Peter McCarthy about how
 10:01:35 7 Terry Pigott got his hedge fund up and
 10:01:35 8 running?
 10:01:46 9 A. That's correct.
 10:01:47 10 Q. When is the last time you
 10:01:50 11 talked to Peter McCarthy about how Terry
 10:01:54 12 Pigott got Liberty Corner up and running?
 10:02:00 13 A. When Terry Pigott's hedge fund
 10:02:01 14 got started.
 10:02:01 15 Q. Years ago?
 10:02:02 16 A. Years ago.
 10:02:04 17 Q. Not since any of this has
 10:02:07 18 happened; right? Not since you got into
 10:02:08 19 trouble at Refco; right?
 10:02:11 20 A. That's correct. That's
 10:02:14 21 correct.
 10:02:15 22 Q. I'm sorry, say again?
 10:02:17 23 A. I was speaking up.
 10:02:19 24 Q. Do you need a drink of water?
 10:02:19 25 A. No, I'm fine.

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<p>10:09:04 1</p> <p>10:09:06 2 have bought those at below market prices.</p> <p>10:09:07 3 That was my biggest concern. Whether or</p> <p>10:09:10 4 not Mr. Pigott owned them personally or</p> <p>10:09:13 5 acted as an agent is totally irrelevant.</p> <p>10:09:15 6 He could have bought them under market</p> <p>10:09:17 7 prices and then sold them at the regular</p> <p>10:09:17 8 price.</p> <p>10:09:21 9 Q. Did Mr. McCarthy consult with</p> <p>10:09:24 10 you before clearing the transactions on</p> <p>10:09:26 11 Mr. Pigott's securities?</p> <p>10:09:26 12 A. Yes.</p> <p>10:09:28 13 Q. What did he say to you and</p> <p>10:09:30 14 what did you say to him?</p> <p>10:09:33 15 A. He told me that Mr. Pigott was</p> <p>10:09:35 16 starting his hedge fund and that the</p> <p>10:09:37 17 proceeds from these sales, all right,</p> <p>10:09:40 18 from Daiwa's inventory, this is what he</p> <p>10:09:44 19 told me, was going to -- was going to</p> <p>10:09:47 20 seed his hedge fund. And I said how big</p> <p>10:09:50 21 are these -- how big. He says a lot. I</p> <p>10:09:52 22 said well, I'm very concerned about this.</p> <p>10:09:54 23 And I need for you to check with Daiwa to</p> <p>10:09:58 24 see if it's okay. And I believe he did.</p> <p>25 Q. So the transaction that you</p>	<p>10:10:38 1</p> <p>10:10:40 2 next question is asked, raise your</p> <p>10:10:42 3 hand or say something so that you</p> <p>10:10:44 4 can finish your answer. Because I</p> <p>10:10:46 5 don't want you to --</p> <p>10:10:47 6 THE WITNESS: Lose my train of</p> <p>10:10:48 7 thought?</p> <p>10:10:51 8 MR. HERSHMAN: Yes.</p> <p>10:10:53 9 Q. Do you understand the</p> <p>10:10:54 10 question, you want me to give it back to</p> <p>10:10:54 11 you?</p> <p>10:10:56 12 A. Going back to your original</p> <p>10:10:58 13 question, I never said these were shady,</p> <p>10:11:00 14 I said these were unusual. I never used</p> <p>10:11:03 15 the word shady, I used the word unusual.</p> <p>10:11:11 16 Q. Okay. You, Mr. Maggio, were,</p> <p>10:11:14 17 at the time these transactions were done,</p> <p>10:11:17 18 engaged in lots of fraudulent conduct;</p> <p>10:11:19 19 right?</p> <p>10:11:19 20 A. Yes.</p> <p>10:11:22 21 Q. I mean, the whole thing was</p> <p>10:11:24 22 basically a fraud; right?</p> <p>10:11:24 23 A. Yes.</p> <p>10:11:25 24 MR. HERSHMAN: Objection as to</p> <p>25 form.</p>
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<p>10:10:01 1</p> <p>10:10:04 2 described the other day basically you'd</p> <p>10:10:06 3 agree with me that your description the</p> <p>10:10:08 4 other day cast these as shady</p> <p>10:10:09 5 transactions; right?</p> <p>10:10:10 6 MR. HERSHMAN: Objection to</p> <p>10:10:10 7 form.</p> <p>10:10:12 8 A. I never said they were shady.</p> <p>10:10:14 9 Q. Okay, let's get to focus on</p> <p>10:10:16 10 that now. You'd agree with me as we sit</p> <p>10:10:18 11 here today that the transactions that are</p> <p>10:10:20 12 referred to in your testimony, the</p> <p>10:10:22 13 transactions with respect to the sale and</p> <p>10:10:24 14 the clearing of the sale of the Daiwa</p> <p>10:10:27 15 Securities, were not shady in any</p> <p>10:10:28 16 respect; correct?</p> <p>10:10:29 17 MR. HERSHMAN: Were you done</p> <p>10:10:30 18 with your previous answer?</p> <p>10:10:31 19 THE WITNESS: Excuse me?</p> <p>10:10:32 20 MR. HERSHMAN: Were you</p> <p>10:10:34 21 finished with your previous answer?</p> <p>10:10:35 22 THE WITNESS: I'm not sure</p> <p>10:10:36 23 what the question was.</p> <p>10:10:37 24 MR. HERSHMAN: If you're not</p> <p>25 done with your question before the</p>	<p>10:11:25 1</p> <p>10:11:28 2 Q. But these weren't fraudulent</p> <p>10:11:29 3 transactions; right?</p> <p>10:11:30 4 A. I never said they were, sir.</p> <p>10:11:32 5 Q. Right. Then they weren't;</p> <p>10:11:32 6 right?</p> <p>10:11:34 7 A. I never said they were. I</p> <p>10:11:35 8 said they were unusual.</p> <p>10:11:38 9 Q. I know you never said they</p> <p>10:11:40 10 were, now I want you to say they weren't.</p> <p>10:11:41 11 A. I don't know that.</p> <p>10:11:42 12 Q. You have no basis whatsoever</p> <p>10:11:44 13 for concluding that there was anything</p> <p>10:11:46 14 remotely improper about the transactions</p> <p>10:11:50 15 that Mr. Pigott did to fund Liberty</p> <p>10:11:52 16 Corner; correct?</p> <p>10:11:54 17 A. I disagree.</p> <p>10:11:56 18 Q. You disagree.</p> <p>10:11:59 19 A. With the word improper. I</p> <p>10:12:01 20 believe they were improper. I believe</p> <p>10:12:01 21 they were unusual.</p> <p>10:12:02 22 Q. Which is it?</p> <p>10:12:04 23 A. Both.</p> <p>10:12:06 24 Q. They weren't shady but they</p> <p>25 were improper?</p>

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10:26:17 1
 10:26:19 2 clarify for you. If you can answer that,
 10:26:20 3 that's great.
 10:26:20 4 A. That's fine.
 10:26:23 5 Q. I want to know how someone
 10:26:26 6 listening, and I want to include or going
 10:26:27 7 back and reading testimony that you've
 10:26:29 8 given, how can someone know whether this
 10:26:34 9 is the lying Santo Maggio or the truth
 10:26:36 10 telling Santo Maggio?
 10:26:36 11 MR. HERSHMAN: Objection to
 10:26:37 12 the form.
 10:26:40 13 A. I'm not going to be lying now.
 10:26:43 14 I have not lied since October of 2005.
 10:26:44 15 Q. Do you remember the last lie
 10:26:46 16 you told?
 10:26:48 17 A. Let me finish. It's very
 10:26:50 18 simple, I went through this a couple of
 10:26:53 19 days ago. I am not going to do anything
 10:26:57 20 to screw up what I've done so far. All
 10:26:59 21 right, I have truthfully told the United
 10:27:01 22 States Government and others, and the
 10:27:03 23 others I think I meant the Austrian
 10:27:05 24 authorities, what has happened. I've
 25 given substantial assistance. I have not

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10:27:07 1
 10:27:10 2 misled them. I have not lied to them.
 10:27:12 3 Nor have I lied at the trial. Because if
 10:27:16 4 I do any of that, anything, even at this
 10:27:19 5 deposition, I'm screwed. They will not
 10:27:21 6 give me the 5K letter. That's how you
 10:27:23 7 can tell that I'm not lying right now.
 10:27:25 8 Q. Well, you don't think they
 10:27:29 9 would deprive you of the 5K letter for
 10:27:33 10 say misremembering something like how
 10:27:36 11 Liberty Corner got its relationship with
 10:27:38 12 Refco started; right? You don't think
 10:27:40 13 they are going to pull the letter for
 10:27:41 14 that; do you?
 10:27:41 15 MR. HERSHMAN: Objection to
 10:27:41 16 the form.
 10:27:43 17 MS. MACKINTOSH: Objection to
 10:27:43 18 the form.
 10:27:44 19 A. I don't understand the
 10:27:44 20 question.
 10:27:45 21 Q. You don't think the government
 10:27:48 22 is going to deny you a 5K letter because
 10:27:50 23 you slip up on a fact or two?
 10:27:51 24 MR. RAND: Let the witness
 25 finish the answers.

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10:27:52 1
 10:27:54 2 A. There is a difference between
 10:27:57 3 slipping up and a lie, sir. The original
 10:27:58 4 question is how do I know you're not
 10:28:00 5 lying. So I'm answering you and I'll
 10:28:01 6 telling you I'm not lying.
 10:28:04 7 Misremembering a fact, not knowing a
 10:28:06 8 correct year, that's different. That's
 10:28:07 9 not lying. You asked me a question about
 10:28:07 10 lying.
 10:28:11 11 Q. How about like not knowing say
 10:28:18 12 whether Mr. Pigott's sale of the Daiwa
 10:28:19 13 Securities was an agency transaction or a
 10:28:21 14 principal transaction, you wouldn't --
 10:28:24 15 whichever way you came out on that, you
 10:28:24 16 wouldn't be lying; right?
 10:28:25 17 MR. HERSHMAN: Objection to
 10:28:27 18 the form.
 10:28:29 19 A. No, I could not.
 10:28:30 20 Q. But when you testified at
 10:28:33 21 trial, I take it that you prepared for
 10:28:36 22 some time with the United States Attorney
 10:28:38 23 who was going to ask you questions;
 10:28:39 24 right?
 25 A. Yes.

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10:28:39 1
 10:28:41 2 Q. I mean, I know you cooperated
 10:28:44 3 for several hours with all my plaintiff
 10:28:48 4 friends around this table, but your prep
 10:28:49 5 sessions for the trial was a different
 10:28:52 6 story; right? Those were a different
 10:28:52 7 story?
 10:28:53 8 MR. HERSHMAN: Objection to
 10:28:53 9 the form.
 10:28:54 10 Q. Am I right?
 10:28:54 11 A. Yes.
 10:28:56 12 Q. Those were you're going to get
 10:28:59 13 on the stand and we're going to ask you
 10:29:03 14 these questions, and we expect that
 10:29:05 15 you're going to testify consistent with
 10:29:07 16 what you've told us; right?
 10:29:07 17 A. Yes.
 10:29:09 18 Q. Did they tell you how to dress
 10:29:10 19 for the trial?
 10:29:10 20 A. No.
 10:29:12 21 Q. Did they tell you anything
 10:29:14 22 about how to comport yourself on the
 10:29:15 23 witness stand?
 10:29:15 24 A. No.
 25 Q. Did they tell you just to

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<p>10:29:20 1 10:29:22 2 answer the questions that they asked and 10:29:26 3 not to go outside the confines of the 10:29:27 4 questions? 10:29:29 5 A. I believe they may have said 10:29:29 6 that. 10:29:31 7 Q. They gave you some direction 10:29:32 8 on how to proceed; right? 10:29:33 9 MR. HERSHMAN: Objection as to 10:29:35 10 form. 10:29:37 11 Q. You were being helpful to 10:29:38 12 them; right? 10:29:38 13 A. Yes. 10:29:40 14 Q. You had a common goal with 10:29:40 15 them; right? 10:29:41 16 MR. HERSHMAN: Objection to 10:29:41 17 form. 10:29:43 18 A. No, my goal was just to tell 10:29:45 19 the truth, period. Whatever happened at 10:29:47 20 the trials, happened at the trials. 10:29:48 21 Q. You had a very good idea of 10:29:50 22 what you wanted to happen at the trial; 10:29:50 23 right? 10:29:51 24 MR. HERSHMAN: Objection to 10:29:51 25 the form.</p>	<p>10:30:42 1 10:30:48 2 consolidates to Refco Group Ltd. So what 10:30:50 3 affects the revenue and profitability and 10:30:52 4 what affects the balance sheet of that 10:30:54 5 entity, will affect the balance sheet of 10:30:55 6 the parent company. 10:30:58 7 Q. Now, let me draw your 10:31:02 8 attention to what you have described as 10:31:04 9 round robin transactions. You know what 10:31:05 10 I'm talking about? 10:31:05 11 A. Yes, sir. 10:31:07 12 Q. Okay. Those were the 10:31:11 13 back-to-back loan transactions done 10:31:15 14 between and among various Refco entities 10:31:19 15 and various outside parties, hedge funds 10:31:20 16 and what have you; correct? 10:31:21 17 A. Yes. 10:31:33 18 Q. Those transactions were done 10:31:36 19 by you with a specific purpose in mind; 10:31:37 20 right? 10:31:37 21 A. Yes. 10:31:39 22 Q. And that purpose was to 10:31:45 23 conceal a large hole, I believe you said, 10:31:49 24 in Refco's financial picture; right? 10:31:49 25 A. Yes.</p>
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<p>10:29:51 1 10:29:52 2 A. No, sir. 10:29:54 3 Q. Did they ever tell you how 10:29:57 4 they defined substantial assistance for 10:30:00 5 purposes of determining whether to write 10:30:03 6 a 5K letter under the United States 10:30:05 7 sentencing guidelines? 10:30:05 8 A. No. 10:30:07 9 Q. They told you that you had to 10:30:09 10 provide substantial assistance to them; 10:30:10 11 right? 10:30:10 12 A. Yes. 10:30:11 13 Q. And they told you that they 10:30:13 14 were going to be the judges of what 10:30:15 15 substantial assistance was; right? 10:30:16 16 MR. HERSHMAN: Objection. 10:30:16 17 A. Yes. 10:30:18 18 Q. That was not going to be for 10:30:20 19 you or your lawyer to determine; right? 10:30:21 20 A. Correct. 10:30:28 21 Q. What's a consolidating entity? 10:30:30 22 A. A consolidating entity is an 10:30:38 23 entity that is incorporated into a much 10:30:40 24 larger, let's say holding company. So 10:30:40 25 for example, Refco Securities</p>	<p>10:31:49 1 10:31:53 2 Q. You wanted to make Refco 10:31:56 3 appear to be in better financial 10:31:57 4 condition than it was; right? 10:31:57 5 A. Yes. 10:32:00 6 Q. And the entities with which 10:32:05 7 you did those transactions were all Refco 10:32:08 8 customers prior to the time when you did 10:32:11 9 those transactions with them; right? 10:32:14 10 A. I'm just thinking through it. 10:32:16 11 I believe so. 10:32:19 12 Q. You would have Mr. McCarthy or 10:32:23 13 perhaps others approach Refco customers 10:32:26 14 and propose these back-to-back loan 10:32:27 15 transactions; correct? 10:32:30 16 A. Yeah, these round trips or 10:32:31 17 whatever you want to call them, yes. 10:32:34 18 Q. You can call them round 10:32:36 19 robins, I'm calling them back-to-backs, 10:32:38 20 we know what we're talking about; right? 10:32:38 21 A. Yes, sir. 10:32:40 22 Q. Now, during that course of 10:32:46 23 time, you were asked by customers about 10:32:49 24 the purpose of those transactions; right? 10:32:49 25 A. I was asked by certain</p>

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<p>10:32:51 1</p> <p>10:32:53 2 customers about the purpose of the</p> <p>10:32:53 3 transaction, yes.</p> <p>10:32:54 4 Q. And you lied to them?</p> <p>10:32:54 5 A. Yes.</p> <p>10:32:56 6 Q. And you lied to them for a</p> <p>10:32:58 7 very specific reason; right?</p> <p>10:32:58 8 A. Yes.</p> <p>10:33:00 9 Q. And that very specific reason</p> <p>10:33:04 10 was related to the fact that they were</p> <p>10:33:06 11 Refco's customers; right?</p> <p>10:33:06 12 A. Yes.</p> <p>10:33:11 13 Q. You didn't want a Refco</p> <p>10:33:14 14 customer to know about Refco's financial</p> <p>10:33:16 15 problems; right?</p> <p>10:33:17 16 A. Yes.</p> <p>10:33:20 17 Q. Because if a Refco customer</p> <p>10:33:26 18 found out about Refco's problems, you</p> <p>10:33:28 19 were concerned, am I right, that they</p> <p>10:33:30 20 might not be Refco customers anymore;</p> <p>10:33:30 21 right?</p> <p>10:33:31 22 A. Yes.</p> <p>10:33:34 23 Q. And with no Refco customers,</p> <p>10:33:36 24 no Refco; right?</p> <p>25 A. Yes.</p>	<p>10:34:42 1</p> <p>10:34:45 2 customers, we've already established;</p> <p>10:34:45 3 right?</p> <p>10:34:45 4 A. Yes.</p> <p>10:34:46 5 Q. Because if you didn't have the</p> <p>10:34:48 6 customers, Refco would cease to be a</p> <p>10:34:49 7 going concern; right?</p> <p>10:34:49 8 A. Yes.</p> <p>10:34:52 9 Q. So you had to be certain that</p> <p>10:34:56 10 you concealed from the customers the</p> <p>10:34:58 11 existence of what I'm going to call, if</p> <p>10:35:01 12 you understand it, the RGHI receivable;</p> <p>10:35:02 13 is that right?</p> <p>10:35:02 14 A. Yes.</p> <p>10:35:05 15 Q. Okay. Now, the RGHI</p> <p>10:35:09 16 receivable was a receivable in what</p> <p>10:35:10 17 amount?</p> <p>10:35:12 18 A. Depended on the year. But it</p> <p>10:35:15 19 got close to, if not a billion dollars or</p> <p>10:35:16 20 more.</p> <p>10:35:20 21 Q. So that was a billion dollars,</p> <p>10:35:22 22 at the point in time when it was in the</p> <p>10:35:24 23 neighborhood of a billion dollars, and I</p> <p>10:35:26 24 guess it ranged from a few hundred</p> <p>25 million to a little over a billion;</p>
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<p>10:33:37 1</p> <p>10:33:39 2 Q. And with no Refco, no millions</p> <p>10:33:42 3 for Sandy every year; right?</p> <p>10:33:42 4 A. Yes.</p> <p>10:33:46 5 Q. The ability for Sandy Maggio</p> <p>10:33:49 6 to steal money through Refco was</p> <p>10:33:55 7 dependent upon Refco maintaining its</p> <p>10:33:56 8 customer base; correct?</p> <p>10:33:57 9 MR. HERSHMAN: Objection to</p> <p>10:33:57 10 the form.</p> <p>10:33:57 11 A. Yes.</p> <p>10:34:00 12 Q. Isn't that why when you went</p> <p>10:34:04 13 through this business of drawing these</p> <p>10:34:07 14 customers into the round robin</p> <p>10:34:09 15 transactions, engaging them or involving</p> <p>10:34:12 16 them in the round robin transactions, you</p> <p>10:34:17 17 didn't tell them by the way, we're doing</p> <p>10:34:19 18 these transactions to hide a big fat</p> <p>10:34:35 19 receivable?</p> <p>10:34:36 20 If you would like me to</p> <p>10:34:38 21 rephrase the question and make it more</p> <p>10:34:39 22 simple I can do that.</p> <p>10:34:41 23 A. Could you do that, sir,</p> <p>10:34:41 24 please?</p> <p>25 Q. You wanted to maintain the</p>	<p>10:35:27 1</p> <p>10:35:28 2 right?</p> <p>10:35:28 3 A. Yes, sir.</p> <p>10:35:30 4 Q. That receivable, what was</p> <p>10:35:35 5 Refco's market cap at that point?</p> <p>10:35:36 6 A. What do you mean by market</p> <p>10:35:37 7 cap?</p> <p>10:35:39 8 Q. Tell me how significant,</p> <p>10:35:41 9 simplify it, how significant was that</p> <p>10:35:44 10 receivable to Refco's financial picture?</p> <p>10:35:46 11 A. At what point in time?</p> <p>10:35:48 12 Q. Throughout the entire time.</p> <p>10:35:49 13 Would you agree with me that</p> <p>10:35:53 14 it was dramatic the impact that that</p> <p>10:35:53 15 receivable had?</p> <p>10:35:55 16 A. I think I testified that other</p> <p>10:35:58 17 than enterprise risk the firm was</p> <p>10:35:58 18 worthless.</p> <p>10:36:00 19 Q. I think you may have described</p> <p>10:36:03 20 the firm in somewhat vulgar terms; am I</p> <p>10:36:03 21 right?</p> <p>10:36:06 22 A. Worthless, that's not a vulgar</p> <p>10:36:07 23 term. Oh, yes, you're right, my</p> <p>10:36:08 24 conversation with Mr. Collins.</p> <p>25 Q. I think you told Mr. Collins</p>

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<p>11:08:34 1</p> <p>11:08:39 2 THE VIDEOGRAPHER: Back on the</p> <p>11:08:40 3 record, 11:08.</p> <p>11:08:41 4 BY MR. MARINO:</p> <p>11:08:45 5 Q. Mr. Maggio, we spoke a little</p> <p>11:08:48 6 while ago about Peter McCarthy. I just</p> <p>11:08:51 7 want to be clear. Mr. McCarthy, as far</p> <p>11:08:54 8 as you know, was not aware of the</p> <p>11:08:56 9 existence of the RGHI receivable;</p> <p>11:09:01 10 correct?</p> <p>11:09:04 11 A. As far as I know he was not</p> <p>11:09:05 12 aware.</p> <p>11:09:09 13 Q. He testified on October 26th</p> <p>11:09:12 14 of this year that in February of 2002 you</p> <p>11:09:15 15 came to him and asked him to determine</p> <p>11:09:17 16 whether Refco's largest customers,</p> <p>11:09:19 17 including Liberty Corner, might be</p> <p>11:09:23 18 interested in doing a year end tax</p> <p>11:09:25 19 motivated trade with Refco. Is that</p> <p>11:09:25 20 accurate?</p> <p>11:09:27 21 A. No.</p> <p>11:09:29 22 MR. HERSHMAN: Just a second.</p> <p>11:09:34 23 October 26th of 2000 --</p> <p>11:09:37 24 MR. MARINO: '9. October 26,</p> <p>11:09:37 25 2009. Mr. McCarthy's testimony.</p>	<p>11:10:45 1</p> <p>11:10:48 2 such as Liberty Corner to do these</p> <p>11:10:50 3 back-to-back transactions, he himself was</p> <p>11:10:52 4 unaware of the improper purpose of those</p> <p>11:10:54 5 transactions; right?</p> <p>11:10:54 6 A. That is correct.</p> <p>11:10:57 7 Q. He himself believed that those</p> <p>11:11:00 8 were legitimate transactions; correct?</p> <p>11:11:02 9 A. I don't know what he believed.</p> <p>11:11:04 10 Q. Well, you wanted him to</p> <p>11:11:06 11 believe they were legitimate</p> <p>11:11:06 12 transactions; right?</p> <p>11:11:06 13 A. That's correct.</p> <p>11:11:08 14 Q. You led him to believe they</p> <p>11:11:09 15 were legitimate transactions; right?</p> <p>11:11:10 16 A. That's correct.</p> <p>11:11:11 17 Q. So that when he went out</p> <p>11:11:13 18 there, it wasn't as though, and I want to</p> <p>11:11:16 19 just dispel any misimpression, it wasn't</p> <p>11:11:18 20 that he was going out there with a</p> <p>11:11:20 21 mission to be part of the concealment, he</p> <p>11:11:23 22 himself wasn't in on the joke; right?</p> <p>11:11:31 23 A. That's correct.</p> <p>11:11:34 24 Q. Now, did you believe that the</p> <p>11:11:34 25 fact that the deal documents, when I say</p>
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<p>11:09:40 1</p> <p>11:09:41 2 MR. HERSHMAN: Okay.</p> <p>11:09:43 3 Q. Mr. McCarthy testified that</p> <p>11:09:46 4 when you came to him and asked him about</p> <p>11:09:50 5 getting some of Refco's largest customers</p> <p>11:09:52 6 to engage in these back-to-back</p> <p>11:09:57 7 transactions, he testified that you asked</p> <p>11:09:59 8 him to determine whether those customers</p> <p>11:10:01 9 might be interested in doing a year end</p> <p>11:10:05 10 tax motivated trade.</p> <p>11:10:06 11 A. I do not recall, nor do I</p> <p>11:10:09 12 believe I ever told Peter McCarthy that</p> <p>11:10:11 13 it was a tax motivated trade.</p> <p>11:10:13 14 Q. Did you tell him or at any</p> <p>11:10:16 15 time suggest to him that the trade you</p> <p>11:10:18 16 were referring to was going to be an</p> <p>11:10:26 17 improper trade?</p> <p>11:10:26 18 A. No.</p> <p>11:10:31 19 Q. So I just wanted to clear up,</p> <p>11:10:33 20 when I was asking you before about</p> <p>11:10:35 21 Mr. McCarthy, he didn't know what he was</p> <p>11:10:36 22 really effectuating; right?</p> <p>11:10:37 23 A. That's correct.</p> <p>11:10:40 24 Q. Mr. McCarthy, who was the key</p> <p>11:10:40 25 person in terms of engaging the customers</p>	<p>11:11:37 1</p> <p>11:11:39 2 the deal documents I'm talking about the</p> <p>11:11:42 3 loan documents for these back-to-back</p> <p>11:11:44 4 loans, did you believe that the fact that</p> <p>11:11:48 5 they were being created by a very</p> <p>11:11:52 6 prestigious law firm, being Mayer Brown,</p> <p>11:11:55 7 would lend credibility to those</p> <p>11:11:59 8 transactions?</p> <p>11:12:00 9 A. No.</p> <p>11:12:03 10 Q. Mayer Brown is a major law</p> <p>11:12:04 11 firm; yes?</p> <p>11:12:04 12 A. Yes.</p> <p>11:12:06 13 Q. A very, very well regarded law</p> <p>11:12:08 14 firm; correct?</p> <p>11:12:09 15 A. Yes.</p> <p>11:12:13 16 Q. Prior to this scenario with</p> <p>11:12:16 17 Refco, you were unaware of anybody at</p> <p>11:12:18 18 Mayer Brown ever being accused of</p> <p>11:12:21 19 participating in a client fraud; right?</p> <p>11:12:23 20 A. Yes.</p> <p>11:12:25 21 Q. I take it that the reason</p> <p>11:12:28 22 Refco initially engaged Mayer Brown was</p> <p>11:12:30 23 because Mayer Brown is a very well</p> <p>11:12:33 24 regarded, excellent law firm; right?</p> <p>11:12:33 25 MR. HERSHMAN: Objection.</p>